

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	09 Cr. 323 (RPP)
UNITED STATES OF AMERICA,	:	
	:	
-against-	:	
	:	
ANDREI VOUSTIANIOUK,	:	
	:	
Defendant.	:	
-----X	:	

AFFIRMATION OF KERRY A. LAWRENCE, ESQ.

KERRY A. LAWRENCE, an attorney duly admitted to practice law in New York, hereby affirms and states, under penalty of perjury, as follows:

1. I represent defendant Andrei Voustianiouk in the above-captioned case. This affirmation is submitted on information and belief in support of defendant's pretrial motions.
2. Dr. Voustianiouk is charged in a two-count felony information with, respectively, receipt and possession of child pornography, in violation of 18 U.S.C. §§ 2252A(a)(2)(B) (Count One) and 2252A(a)(5)(B) (Count Two). A copy of the information is attached hereto as Exhibit A. Dr. Voustianiouk has pleaded not guilty to the information.
3. On January 22, 2009, pursuant to a search warrant issued by Magistrate Judge Michael H. Dolinger on January 14, 2009, agents of the United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE"), searched the defendant's apartment and seized several computers, computer hard drives, and computer equipment. The search warrant and search warrant affidavit are attached hereto collectively as Exhibit B.

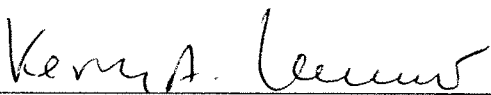
4. The search warrant affidavit recited that the premises for which the search warrant was being sought was "2424 Cambreleng Avenue Apt. 1, Bronx, New York 10458." The search warrant affidavit also recited that the affiant, ICE Special Agent Robert Raab, has personally visited the location of the Premises and observed the building to be a two-story house with the premises being the apartment on the ground floor. (Exh. B, ¶ 4). Dr. Voustianiouk's apartment is Apartment 2 and is on the second floor. (Voustianiouk aff., ¶¶ 2, 6, 7).

5. During the course of the search on January 22, 2009, ICE agents questioned Dr. Voustianiouk, although he was not arrested at that time. The ICE agents did not provide Dr. Voustianiouk with Miranda warnings prior to that interrogation. The agent's interview memorandum, a redacted copy of which was provided in discovery (Exhibit C hereto), does not say that Dr. Voustianiouk was not in custody at the time of the interrogation. Nor does it say he was free to leave. The facts relating to that interrogation are further set forth in detail in the accompanying affidavit of Dr. Voustianiouk.

6. On May 19, 2009, I visited the ICE office and Agent Raab permitted me to examine the digital file which was referred to in Agent Raab's search warrant affidavit. The actual file name, contrary to what Agent Raab specified in his affidavit, is just the number "1," not "Lavi." The file extension of the "1" file was "avi," so that the full file name, including the file extension, is "1.avi."

7. For the reasons stated in the accompanying memorandum of law, the Court is respectfully requested to grant defendant Andrei Voustianiouk's pretrial motions and afford him such other relief as is just and proper.

Dated: White Plains, New York
May 22, 2009



Kerry A. Lawrence